

1 SENATE BILL 307

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Daniel Ivey-Soto

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10 AN ACT

11 RELATING TO PUBLIC RECORDS; ADDING AND REMOVING THE TYPES OF
12 DOCUMENTS THAT MUST BE ACKNOWLEDGED BEFORE BEING FILED AND
13 RECORDED; REMOVING A NOTICE REQUIREMENT OF THE EXPIRATION OF A
14 TAX LIEN; ALLOWING THE DIGITIZING OF CERTAIN INFORMATION FIFTY
15 YEARS AFTER RECORDING; UPDATING CERTAIN CROSS-REFERENCES IN THE
16 LAW; REQUIRING AND STANDARDIZING COUNTY RECORDING INDEXES,
17 FORMS AND PROCEDURES; MAKING GOVERNMENTAL AGENCIES SUBJECT TO
18 THE UNIFORM ELECTRONIC TRANSACTIONS ACT; REPEALING A
19 REQUIREMENT THAT COUNTY COMMISSION MINUTES BE PUBLISHED IN A
20 NEWSPAPER; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION
21 OF LAW IN LAWS 2011.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. Section 7-1-39 NMSA 1978 (being Laws 1965,
25 Chapter 248, Section 41, as amended) is amended to read:

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1 "7-1-39. RELEASE OR EXTINGUISHMENT OF LIEN--LIMITATION ON
2 ACTIONS TO ENFORCE LIEN.--

3 A. When any substantial part of the amount of tax
4 due from a taxpayer is paid, the department shall immediately
5 file, in the same county in which a notice of lien was filed,
6 and in the same records, a document completely or partially
7 releasing the lien. The county clerk to whom such a document
8 is presented shall record it without charge.

9 B. The department may file, in the same county as
10 the notice of lien was filed, a document releasing or partially
11 releasing any lien filed in accordance with Section 7-1-38 NMSA
12 1978 when the filing of the lien was premature or did not
13 follow requirements of law or when release or partial release
14 would facilitate collection of taxes due. The county clerk to
15 whom the document is presented shall record it without charge.

16 C. In all cases when a notice of lien for taxes,
17 penalties and interest has been filed under Section 7-1-38 NMSA
18 1978 and a period of ten years has passed from the date the
19 lien was filed, as shown on the notice of lien, the taxes,
20 penalties and interest for which the lien is claimed shall be
21 conclusively presumed to have been paid [~~The county clerk shall~~
22 ~~enter in his records a notice including the words "canceled by~~
23 ~~act of legislature"~~] and the lien is thereby extinguished. No
24 action shall be brought to enforce any lien extinguished in
25 accordance with this subsection."

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1 SECTION 2. Section 14-2-6 NMSA 1978 (being Laws 1993,
2 Chapter 258, Section 3, as amended by Laws 2011, Chapter 134,
3 Section 3 and by Laws 2011, Chapter 181, Section 1 and also by
4 Laws 2011, Chapter 182, Section 1) is amended to read:

5 "14-2-6. DEFINITIONS.--As used in the Inspection of
6 Public Records Act:

7 A. "custodian" means any person responsible for the
8 maintenance, care or keeping of a public body's public records,
9 regardless of whether the records are in that person's actual
10 physical custody and control;

11 B. "file format" means the internal structure of an
12 electronic file that defines the way it is stored and used;

13 C. "inspect" means to review all public records
14 that are not excluded in Section 14-2-1 NMSA 1978;

15 D. "person" means any individual, corporation,
16 partnership, firm, association or entity;

17 ~~D.~~ E. "protected personal identifier information"
18 means:

- 19 (1) all but the last four digits of a:
 - 20 (a) taxpayer identification number;
 - 21 (b) financial account number; or
 - 22 (c) driver's license number;
- 23 (2) all but the year of a person's date of
24 birth; and
- 25 (3) a social security number;

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1 ~~[E-]~~ F. "public body" means the executive,
2 legislative and judicial branches of state and local
3 governments and all advisory boards, commissions, committees,
4 agencies or entities created by the constitution or any branch
5 of government that receives any public funding, including
6 political subdivisions, special taxing districts, school
7 districts and institutions of higher education; and

8 ~~[F-]~~ G. "public records" means all documents,
9 papers, letters, books, maps, tapes, photographs, recordings
10 and other materials, regardless of physical form or
11 characteristics, that are used, created, received, maintained
12 or held by or on behalf of any public body and relate to public
13 business, whether or not the records are required by law to be
14 created or maintained."

15 **SECTION 3.** Section 14-8-4 NMSA 1978 (being Laws 1901,
16 Chapter 62, Section 18, as amended) is amended to read:

17 "14-8-4. ACKNOWLEDGMENT NECESSARY FOR RECORDING--
18 EXCEPTIONS.--

19 A. Any instrument of writing duly acknowledged may
20 be filed and recorded. Any instrument of writing not duly
21 acknowledged may not be filed and recorded or considered of
22 record, though so entered, unless otherwise provided in this
23 section.

24 B. For purposes of this section, "acknowledged"
25 means notarized by a person empowered to perform notarial acts

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1 pursuant to the Notary Public Act or the Uniform Law on
2 Notarial Acts.

3 C. [~~Notwithstanding Subsection A of this section~~]

4 The following documents need not be acknowledged but may be
5 filed and recorded:

6 (1) court-certified copies of a court order,
7 judgment or other judicial decree;

8 (2) court-certified transcripts of any money
9 judgment obtained in a court of this state or, pursuant to
10 Section 14-9-9 NMSA 1978, in the United States district court
11 for the district of New Mexico;

12 (3) land patents and land office receipts;

13 [~~(4) mining location notices and amended or
14 additional notices made pursuant to Section 69-3-1 or 69-3-12
15 NMSA 1978 if properly signed by the locator;~~

16 ~~(5)]~~ (4) notice of lis pendens filed pursuant
17 to Section 38-1-14 NMSA 1978;

18 (5) provisional orders creating improvement
19 districts pursuant to Section 4-55A-7 NMSA 1978;

20 (6) notices of levy on real estate under
21 execution or writ of attachment when filed by a peace officer
22 pursuant to Section 39-4-4 NMSA 1978;

23 (7) surveys of land that do not create a
24 division of land but only show existing tracts of record when
25 filed by a professional surveyor pursuant to Section 61-23-28.2

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1 NMSA 1978;

2 [~~(6)~~] (8) certified copies of foreign wills,
3 marriages or birth certificates duly authenticated; and

4 [~~(7)~~] (9) instruments of writing in any manner
5 affecting lands in the state filed pursuant to Section 14-9-7
6 NMSA 1978, when these instruments have been duly executed by an
7 authorized public officer.

8 D. Any filing or recording permitted or required
9 under the provisions of the Uniform Commercial Code need not
10 comply with the requirements of this section.

11 E. Instruments acknowledged on behalf of a
12 corporation need not have the corporation's seal affixed
13 thereto in order to be filed and recorded."

14 SECTION 4. Section 14-8-9.1 NMSA 1978 (being Laws 2011,
15 Chapter 134, Section 21) is amended to read:

16 "14-8-9.1. PUBLIC RECORDS--INSPECTION--EXCEPTIONS.--

17 A. [~~Except as provided in this section~~] All
18 documents filed and not recorded in the office of the county
19 clerk are public records, subject to disclosure pursuant to the
20 Inspection of Public Records Act.

21 B. Documents recorded in the office of the county
22 clerk are public records, except as provided in this section.
23 As the technology becomes available, the county clerks of the
24 various counties shall digitize recorded documents. The county
25 clerk shall publicly post in the office of the county clerk and

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1 on the county's web page a notice that documents recorded in
2 the office of the county clerk are public records, subject to
3 inspection and disclosure.

4 C. Before digitizing or purchasing of documents by
5 third parties, protected personal identifier information, as
6 defined in the Inspection of Public Records Act, shall be
7 redacted unless fifty years have elapsed from the date the
8 document was filed or recorded in the office of the county
9 clerk.

10 D. Documents containing health information that
11 relates to and identifies specific individuals as patients are
12 exempt as a public record pursuant to Section 14-6-1 NMSA 1978.

13 E. Discharge papers of a veteran of the armed
14 forces of the United States recorded in the office of the
15 county clerk shall be segregated from public records in the
16 office of the county clerk. Discharge papers recorded before
17 July 1, 2005 that have been commingled with public records and
18 that remain unsegregated are available for inspection in the
19 office of the county clerk but shall not be copied, digitized
20 or purchased by any third party, except by those persons
21 authorized in this section. As the technology becomes
22 available, county clerks shall segregate commingled discharge
23 papers from the public records in the office of the county
24 clerk. Discharge papers recorded in the office of the county
25 clerk are available only to:

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- 1 (1) the veteran who filed the papers;
- 2 (2) the veteran's next of kin;
- 3 (3) the deceased veteran's properly appointed
- 4 personal representative or executor;
- 5 (4) a person holding the veteran's general
- 6 power of attorney; or
- 7 (5) a person designated by the veteran in an
- 8 acknowledged statement to receive the records.

9 F. Death certificates that have been recorded in
10 the office of the county clerk may be inspected, but shall not
11 be copied, digitized or purchased by any third party unless
12 fifty years have elapsed after the date ~~[of death and the cause~~
13 ~~of death and any other medical information contained on the~~
14 ~~death certificate is redacted, in addition to redaction of~~
15 ~~protected personal identifier information]~~ the death
16 certificate was recorded in the office of the county clerk.

17 Death certificates and other vital records recorded in the
18 office of the county clerk are exempt from the restrictions
19 contained in Subsection A of Section 24-14-27 NMSA 1978. The
20 act of recording a death certificate in the office of the
21 county clerk is considered a convenience; provided that no
22 person shall be required to record a death certificate in the
23 office of the county clerk to effect change of title or
24 interest in property."

25 SECTION 5. Section 14-8-17 NMSA 1978 (being Laws 1921,
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1 Chapter 61, Section 1, as amended) is amended to read:

2 "14-8-17. DOCUMENTS RECORDED WITHOUT COST.--The county
3 clerk shall record free of charge:

4 A. oaths of public office made pursuant to Article
5 20, Section 1 of the constitution of New Mexico;

6 B. the discharge papers of any person who was
7 accepted for service and served in the armed forces of the
8 United States for thirty days or more;

9 C. notices of state tax liens filed by the taxation
10 and revenue department pursuant to Section 7-1-38 NMSA 1978;

11 [~~G.~~] D. tax delinquency lists filed by the county
12 treasurer pursuant to Section 7-38-61 NMSA 1978;

13 [~~D.~~] E. notices and warrants issued by the
14 secretary of workforce solutions for defaults on payments to
15 the unemployment compensation administration fund filed
16 pursuant to Section 51-1-36 NMSA 1978; and

17 [~~E.~~] F. a claim of lien under oath of the state
18 engineer, artesian well supervisor or an officer of an artesian
19 conservancy district filed pursuant to Section 72-13-8 NMSA
20 1978."

21 SECTION 6. Section 14-10-1 NMSA 1978 (being Laws 1903,
22 Chapter 87, Section 1, as amended) is amended to read:

23 "14-10-1. INDEX.--~~[SEC. 20. That whenever in the opinion~~
24 ~~of the board of county commissioners of any county in the state~~
25 ~~it is necessary]~~ For the convenience of the public and the

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1 better preservation of titles to real property, ~~[to have]~~ there
2 shall be a complete and accurate county recording index made of
3 all instruments of record affecting real property ~~[they are~~
4 ~~hereby authorized to have such index]~~ made by the county clerk
5 of ~~[said]~~ each county."

6 SECTION 7. Section 14-10-2 NMSA 1978 (being Laws 1903,
7 Chapter 87, Section 2, as amended) is amended to read:

8 "14-10-2. INDEX BOOKS.--~~[SEC. 21.]~~ For the purpose of the
9 county recording index ~~[mentioned in the preceding]~~ created
10 pursuant to Section ~~[there shall be provided index books]~~
11 14-10-1 NMSA 1978, the county clerk shall maintain a searchable
12 database, which may include index books, and all instruments
13 affecting title to real estate shall be indexed ~~[in their~~
14 ~~regular order alphabetically arranged, as well as in their~~
15 ~~reverse order in the same manner]~~."

16 SECTION 8. Section 14-10-3 NMSA 1978 (being Laws 1903,
17 Chapter 87, Section 3, as amended) is amended to read:

18 "14-10-3. COUNTY RECORDING INDEX--REQUIRED FIELDS.--~~[Sec.~~
19 ~~22.]~~ The ~~[said]~~ county recording index shall ~~[be ruled and~~
20 ~~headed in the manner and form substantially as shown on the~~
21 ~~following form:~~

Time of Reception				
Month	Day	Grantor of Mortgagor		Grantees
				Date of Instrument
or Mortgages	Instrument	Book	Page	Month Day Year

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Description of Property

<u>Subdivision of Sections and Number of Lots</u>					<u>Town or City</u>
<u>Addition</u>	<u>Sec.</u> <u>Blk.</u>	<u>Tp.</u>	<u>R.</u>	<u>Acres</u>	<u>Remarks]</u>

contain, at a minimum:

A. the following administrative fields:

(1) the book and page or instrument number;

and

(2) the date and time of recordation; and

B. the following descriptive fields:

(1) the name of the grantor or grantors;

(2) the name of the grantee or grantees; and

(3) legal descriptions, references to recorded

instruments in the county containing legal descriptions and
miscellaneous information."

SECTION 9. Section 14-10-4 NMSA 1978 (being Laws 1903,
Chapter 87, Section 4, as amended) is amended to read:

"14-10-4. ENTRIES TO THE INDEX--DESCRIPTION OF LANDS.--
[SEC. 23.] Each name, descriptor or reference placed in a
descriptive field constitutes a separate entry in the county
recording index. All [town] real property or lands shall be
entered and described in the [said] county recording index in
the manner indicated, according to numbers, metes or bounds;
[But] provided that where this is impossible from the nature of
the description, [then] the tract or tracts may be described by

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1 some appropriate title [~~or the owner's name~~]."

2 SECTION 10. Section 14-10-5 NMSA 1978 (being Laws 1903,
3 Chapter 87, Section 5, as amended) is amended to read:

4 "14-10-5. STANDARD FORM.--~~[SEC. 24.]~~ The form of county
5 recording index provided in [~~the two preceding Sections~~]
6 Chapter 14, Article 10 NMSA 1978 shall be the standard form of
7 index and shall be used throughout the state."

8 SECTION 11. Section 14-16-18 NMSA 1978 (being Laws 2001,
9 Chapter 131, Section 18) is amended to read:

10 "14-16-18. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC
11 RECORDS BY GOVERNMENTAL AGENCIES.--

12 [~~(a) Except as otherwise provided in Section 12(f),~~
13 ~~each governmental agency of this state shall determine whether,~~
14 ~~and the extent to which, it will send and accept electronic~~
15 ~~records and electronic signatures to and from other persons and~~
16 ~~otherwise create, generate, communicate, store, process, use~~
17 ~~and rely upon electronic records and electronic signatures.~~

18 (b) ~~To the extent that a governmental agency uses~~
19 ~~electronic records and electronic signatures under Subsection~~
20 ~~(a), the] The state records administrator shall issue rules for~~
21 the implementation of the provisions of the Uniform Electronic
22 Transactions Act that shall apply to all governmental agencies;
23 provided that a governmental agency, giving due consideration
24 to security, may instead issue its own rules that specify:

25 [~~(1)~~] A. the manner and format in which the

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1 electronic records must be created, generated, sent,
2 communicated, received and stored and the systems established
3 for those purposes;

4 [(2)] B. if electronic records must be signed by
5 electronic means, the type of electronic signature required,
6 the manner and format in which the electronic signature must be
7 affixed to the electronic record and the identity of, or
8 criteria that must be met by, any third party used by a person
9 filing a document to facilitate the process;

10 [(3)] C. control processes and procedures as
11 appropriate to ensure adequate preservation, disposition,
12 integrity, security, confidentiality and auditability of
13 electronic records; and

14 [(4)] D. any other required attributes for
15 electronic records ~~[which]~~ that are specified for corresponding
16 nonelectronic records or reasonably necessary under the
17 circumstances.

18 [~~(c) Except as otherwise provided in Section 12(f),~~
19 ~~the Uniform Electronic Transactions Act does not require a~~
20 ~~governmental agency of this state to use or permit the use of~~
21 ~~electronic records or electronic signatures.]"~~

22 SECTION 12. Section 39-4-4 NMSA 1978 (being Laws 1933,
23 Chapter 13, Section 1) is amended to read:

24 "39-4-4. FILING NOTICE OF LEVY ON REAL ESTATE--RECORDING
25 AND INDEXING--RELEASE OF LEVY.--

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1 A. Any peace officer making a levy on real estate
2 under execution or writ of attachment shall file a notice of
3 [~~such~~] the levy in the office of the county clerk [~~and~~
4 ~~recorder~~] of the county where located, describing the real
5 estate levied upon, the title and number of the case and the
6 amount of the debt or judgment. A certificate of the facts
7 recited in [~~such~~] the notice, under the hand and seal of [~~such~~]
8 the peace officer, shall be sufficient to entitle [~~such~~] the
9 instrument to record.

10 B. The county clerk shall record the notice of levy
11 and shall index it in the records of the county clerk's office,
12 and when so filed it shall be notice to the public of the facts
13 therein recited.

14 C. When the debt for which a levy is made has been
15 satisfied, or if directed by the plaintiff or the plaintiff's
16 attorney, the peace officer shall file a release of the levy
17 under the peace officer's official hand and seal, in the office
18 of the county clerk."

19 SECTION 13. Section 39-5-23 NMSA 1978 (being Laws 1931,
20 Chapter 149, Section 6) is amended to read:

21 "39-5-23. DUTY TO RECORD REDEMPTION.--

22 A. In all cases of redemption of lands from sale
23 [~~under the terms and~~] pursuant to the provisions of [~~this act,~~
24 ~~it shall be the duty of the purchaser, his personal~~
25 ~~representatives or assigns, or the clerk of the district court,~~

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1 ~~as the case may be, to make out an instrument in writing, under~~
2 ~~his hand and seal, evidencing such redemption, which shall be~~
3 ~~recorded in the office of the county clerk of the county~~
4 ~~wherein said land is situated, in the same manner as other~~
5 ~~instruments of writing affecting title to real estate are~~
6 ~~recorded, which recording fee, together with a fee of one~~
7 ~~dollar (\$1.00) to the clerk when the redemption is made by~~
8 ~~depositing the money in the office of the clerk, shall be paid~~
9 ~~by the party redeeming]~~ Sections 39-5-17 through 39-5-23 NMSA
10 1978:

11 (1) if the redemption is by payment to the
12 purchaser, it is the duty of the purchaser within forty-five
13 days of receiving payment to create an acknowledged instrument
14 in writing evidencing the redemption; or

15 (2) if the redemption is by making deposit in
16 the office of the clerk of the district court upon approval of
17 the redemption by the district judge, it is the duty of the
18 clerk of the court to create under the seal of the court an
19 instrument evidencing the redemption.

20 B. It is the duty of the party redeeming to record
21 the instrument evidencing the redemption in the office of the
22 county clerk in the same manner as other instruments of writing
23 affecting title to real estate."

24 SECTION 14. Section 55-9-525 NMSA 1978 (being Laws 2001,
25 Chapter 139, Section 96, as amended) is amended to read:

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1 "55-9-525. FEES.--

2 (a) Except as provided in Subsections (b) and (d)
3 of this section, the fee for filing and indexing a record
4 pursuant to ~~[Section]~~ Sections 55-9-501 through 55-9-526 NMSA
5 1978 in the office of the secretary of state is:

6 (1) if the record is communicated in writing
7 in a form prescribed by the secretary of state:

8 (i) twenty dollars (\$20.00) if the
9 record consists of one, two or three pages;

10 (ii) forty dollars (\$40.00) if the
11 record consists of at least four pages, but no more than
12 twenty-five pages; and

13 (iii) one hundred dollars (\$100) if the
14 record consists of more than twenty-five pages, plus five
15 dollars (\$5.00) for each page;

16 (2) if the record is communicated in writing,
17 but not in a form prescribed by the secretary of state, double
18 the amount specified in Paragraph (1) of this subsection for a
19 record of the same length;

20 (3) if the record is communicated by facsimile
21 or a similar medium and the use of that medium is authorized by
22 filing-office rule, the amount specified in Paragraph (1) of
23 this subsection for a record of the same length; and

24 (4) if the record is communicated in any other
25 medium authorized by filing-office rule:

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1 (i) ten dollars (\$10.00) if the record
2 consists of fifteen thousand or fewer bytes; and

3 (ii) twenty dollars (\$20.00) if the
4 record consists of more than fifteen thousand bytes.

5 (b) Except as otherwise provided in Subsection (d)
6 of this section, the fee for filing and indexing an initial
7 financing statement of the following kind is the amount
8 specified in Subsection (a) of this section plus:

9 (1) one hundred dollars (\$100) if the
10 financing statement states that a debtor is a transmitting
11 utility; and

12 (2) one hundred dollars (\$100) if the
13 financing statement indicates that it is filed in connection
14 with a manufactured-home transaction.

15 (c) The number of names required to be indexed does
16 not affect the amount of the fee set forth in Subsections (a)
17 and (b) of this section.

18 (d) This section does not require a fee with
19 respect to a record of a mortgage that is effective as a
20 financing statement filed as a fixture filing or as a financing
21 statement covering as-extracted collateral or timber to be cut
22 under Subsection (c) of Section 55-9-502 NMSA 1978. However,
23 the recording fees that otherwise would be applicable to the
24 record of the mortgage apply.

25 (e) The secretary of state is authorized to

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1 establish additional fees for sale of data or records by
2 adopting and publishing rules, pursuant to Section 55-9-526
3 NMSA 1978, to implement the requirements set forth in Chapter
4 55, Article 9 NMSA 1978.

5 (f) The fee for filing and indexing a record
6 pursuant to Sections 55-9-501 through 55-9-526 NMSA 1978 in the
7 office of the county clerk is as provided in Section 14-8-15
8 NMSA 1978."

9 SECTION 15. REPEAL.--Sections 4-38-9, 39-4-5 and 39-4-6
10 NMSA 1978 (being Laws 1897, Chapter 60, Section 16 [15] and
11 Laws 1933, Chapter 13, Sections 2 and 3, as amended) are
12 repealed.